

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARDETTA K. BUTTS

Claimant

VS.

TRAMEC CORP.

Respondent

AND

HARTFORD ACCIDENT & INDEMNITY

Insurance Carrier

AND

MARDETTA K. BUTTS

Claimant

VS.

RUSSELL STOVER CANDIES, INC.

Respondent

AND

ITT SPECIALTY RISK SERVICES

Insurance Carrier

Docket No. 223,784

Docket No. 231,564

ORDER

Respondent Russell Stover Candies, Inc., appeals from a preliminary hearing Order rendered by Administrative Law Judge Bryce D. Benedict on June 1, 1998.

ISSUES

In its Petition for Review, respondent Russell Stover Candies, Inc., describes the issues as follows:

1. Whether Administrative Law Judge Benedict exceeded his jurisdiction when he granted Claimant's request for medical treatment from her last employer, Russell Stover Candies;

2. Whether Administrative Law Judge Benedict exceeded his jurisdiction when he granted Claimant's request for temporary total disability benefits from her last employer, Russell Stover Candies;
3. Whether Administrative Law Judge Benedict erred when he ordered Russell Stover Candies to pay for claimant's medical treatment and temporary total disability benefits when claimant had suffered her injury while in the course and scope of employment with a prior employer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the preliminary hearing Order by the Administrative Law Judge should be affirmed.

Claimant alleges two accidental injuries, the first occurring about October 9, 1996, during her employment at Tramec Corporation, and the second, a cumulative trauma injury commencing April 27, 1997, through claimant's last day of work at respondent Russell Stover on October 23, 1997. The evidence establishes that claimant worked for Tramec Corporation from September 23, 1996, through October 9, 1996. During that time, she developed soreness in her hands. She then worked from approximately the end of October 1996 through April 22, 1997, at the Piqua Bar. In late April 1997, she began working for respondent Russell Stover. The duties at Russell Stover included a lot of cleaning and wiping of tables, mopping floors, and scrubbing. Approximately two weeks before she left her work at Russell Stover, claimant was transferred to a job of packing candy into boxes and then putting the boxes into other boxes and then on pallets.

Claimant saw Dr. Glen D. Singer in July of 1997, several months after she began work at Russell Stover. He recorded only numbness in the right hand and did not find it necessary to impose restrictions. After working at Russell Stover, her condition was diagnosed as bilateral carpal tunnel syndrome. Although Dr. Edward J. Prostic's report refers only to employment through October 9, 1996, his history refers to worsening while claimant did work as a packer, work claimant did while at Russell Stover. The Appeals Board finds the evidence adequately establishes an accidental injury arising out of and in the course of employment for Russell Stover. Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).

Whether claimant suffered an accidental injury arising out of and in the course of employment with respondent Russell Stover is the only jurisdictional issue raised on appeal. K.S.A. 1997 Supp. 44-534a and K.S.A. 1997 Supp. 44-551. Having found claimant did suffer an accidental injury in the course of her employment with Russell Stover, the Appeals Board concludes that the Order by the Administrative Law Judge should be affirmed.

WHEREFORE, the Appeals Board finds that the preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on June 1, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER

c: Fred Spigarelli, Pittsburg, KS
Garry W. Lassman, Pittsburg, KS
Brenden W. Webb, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director